

Appl. No. 10/678,206  
Atty. Docket No. 9049  
Amdt. dated 04/13/2006  
Reply to Office Action of 11/01/2005  
Customer No. 27752

### REMARKS

#### Amendments to the Claims

Claims 1-3 are pending in the present application. No additional claims fee is believed to be due.

Claims 1, 2, and 3 have been amended as shown above. Support for these amendments can be found in the specification at page 3, lines 16-22; at page 3, lines 27-28; at page 3, lines 31-32 as well as in Figures 1-8; at page 4, lines 14-25 as well as in Figures 3 and 8; and in the original claims 1-3 as well as at page 2, lines 12-13 and at page 5, lines 6-8.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

#### Rejection Under 35 USC 112, Second Paragraph

Claims 1-3 are rejected under 35 USC 112, second paragraph as being unclear. Particularly, the Examiner asserts that claims 1, 2, and 3 recite "a hair treatment applicator for applying a hair treatment" in the preamble of the claims, however, the body of the claims positively recites the hair treatment as part of the invention. Consequently, as the Examiner asserts, it is unclear whether Applicants intend the claims to be directed to the subcombination of the hair treatment applicator or to the combination of the hair treatment applicator together with the hair treatment.

Applicants have amended claims 1-3 to reflect an intent to claim the subcombination of the hair treatment applicator. More specifically, claims 1-3 have been amended to delete the phrase "such that said hair treatment does not enter said separation volume" and to add that the retaining structures *are configured for holding the hair treatment*. Thus, it is believed that the claims do not positively recite the hair treatment as part of the claimed invention.

Accordingly, it is believed that the present rejection has been obviated.

#### Rejection Under 35 USC 102(b) Over U.S. Patent No. 4,427,001 to Kiefer et al.

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Claim 1 is rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 4,427,001 to Kiefer et al. ("Kiefer"). The Examiner asserts that Kiefer discloses a facial massage device comprising a handle (12), a plurality of retaining structures (24) connected to the handle, wherein each of the plurality of retaining structures is separated from each other by a separation volume (space between two retaining structures 24), wherein each of the retaining structures is substantially parallel to each other and substantially perpendicular to the longitudinal axis of the handle, and wherein the plurality of retaining structures hold oil or cream such that the oil or cream is inherently capable not to enter the separation volume. Thus, the Examiner asserts that all structural limitations of claim 1 are disclosed in Kiefer. Applicants respectfully traverse the present rejection based on the following comments.

Kiefer does not disclose each and every element of Applicants' claimed hair treatment applicator, and, thus, Kiefer is not anticipatory. As currently amended, claim 1 is directed to a hair treatment applicator which comprises (i) a handle having a longitudinal axis and being rigidly formed, and (ii) a plurality of retaining structures connected to the handle, *each of the plurality of retaining structures comprising a base and a plurality of tines*; wherein the base faces in a direction substantially parallel to that of each other retaining structure and each of the plurality of tines extends substantially perpendicularly from the base; wherein the plurality of tines are disposed on the base such that each of the plurality of tines is comprised within a first row of two or more tines aligned in a direction substantially parallel to the longitudinal axis of the handle and a second row of two or more tines aligned in a direction substantially perpendicular to the longitudinal axis of said handle; wherein each of the retaining structures is separated from each other of the plurality of retaining structures by a separation volume; and, wherein each of the plurality of retaining structures is configured for holding the hair treatment.

Applicants' hair treatment applicator is configured to enable a user to apply a hair treatment composition simultaneously to a plurality of separate sections of hair while leaving a separate untreated section of hair between the treated sections of hair. The user can achieve these results, due to the configuration of the retaining structures relative to the separation volume and relative to the longitudinal axis of the handle, by passing Applicants' claimed hair treatment applicator through the hair in a path which is substantially parallel to the longitudinal axis of the handle of the hair treatment applicator.

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In contrast to Applicants' hair treatment applicator of claim 1, the facial massage device of Kiefer does not have retaining structures which comprise a base and a plurality of tines attached to the base. Instead, Kiefer discloses a pair of rollers which slide against a sponge so as to pick up a thin film of oil or cream from the sponge and in turn deposit the oil or cream on a user's skin. Thus, as it fails to disclose each and every element of Applicants' claimed hair treatment applicator, Kiefer is not anticipatory.

Additionally, Kiefer provides no motivation or suggestion to one of ordinary skill in the art to modify the facial massage device in order to achieve Applicants' hair treatment applicator as currently claimed. The disclosure of Kiefer is limited to a device suitable for use against skin, particularly facial skin. In view of this disclosure, one of ordinary skill in the art would not be motivated to substitute the rollers of the device of Kiefer with a plurality of tines. Such a modification would make the device of Kiefer unsuitable for its intended use. Accordingly, Applicants' claimed hair treatment applicator is unobvious over Kiefer.

Kiefer fails to disclose each and every element of Applicants' claimed hair treatment applicator. Kiefer also fails to provide any motivation or suggestion for modifying the device of Kiefer to achieve Applicants' claimed hair treatment applicator. Therefore, Applicants' claim 1 is novel and unobvious over Kiefer.

Rejections Under 35 USC 102(b) Over U.S. Patent No. 1,161,719 to Norton

Claims 2 and 3 are rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 1,161,719 to Norton ("Norton"). Regarding claim 2, the Examiner asserts that Norton discloses a massage device comprising a plurality of heads (5), a retaining structure (8) being connected to each of the plurality of heads, wherein each of the plurality of heads are separated from each other by a separation volume (the space between the two heads 5). The Examiner further asserts that Norton discloses a glove body as an elongated member (3) with a longitudinal axis connecting to the plurality of heads, wherein the retaining structure is substantially parallel to each other retaining structure and also substantially perpendicular to the longitudinal axis, and wherein the retaining structure holds tonic such that it does not enter the separation volume. The Examiner also asserts that calling the elongated member a "handle" is a matter of

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terminology. Thus, the Examiner concludes that all structural limitations of claim 2 are taught by Norton.

Regarding claim 3, similarly, the Examiner asserts that Norton discloses a first head (5) forming a retaining volume (7) and having a plurality of first tines (8) which are disposed in a substantially square pattern (Figure 1), and a second head (5) forming a retaining volume (7) and also having a plurality of second tines (8) which are disposed in a substantially square pattern (Figure 1). As with claim 2 above, the Examiner asserts that Norton discloses a glove body as an elongated member (3) with a longitudinal axis connecting to the first and second heads, wherein the plurality of first and second tines are substantially parallel to each other and also substantially perpendicular to the longitudinal axis, and wherein the first and second retaining volumes holds tonic such that it does not enter the separation volume. Thus, the Examiner concludes that all structural limitations of claim 3 are taught by Norton.

Applicants respectfully traverse the present rejection based on the following comments. With respect to both claims 2 and 3, Norton does not disclose each and every element of Applicants' claimed hair treatment applicator, and, thus, Norton is not anticipatory. Additionally, Norton fails to provide any motivation or suggestion for modifying the device of Norton to achieve Applicants' hair treatment applicator as claimed in claims 2 or 3.

As currently amended, claim 2 is directed to a hair treatment applicator which comprises (i) a *handle* having a longitudinal axis and *being rigidly formed*, (ii) a plurality of heads being connected to the handle, and (iii) a retaining structure being connected to each of the plurality of heads, the retaining structure comprising a base and a *plurality of tines*; wherein the base faces in a direction substantially parallel to that of each other head and each of the plurality of tines extends substantially perpendicularly from the base; *wherein the plurality of tines are disposed on the base such that each of the plurality of tines is comprised within a first row of two or more tines aligned in a direction substantially parallel to the longitudinal axis of the handle and a second row of two or more tines aligned in a direction substantially perpendicular to the longitudinal axis of the handle*; wherein each head of the plurality of heads is separated from each other head of the plurality of heads by a separation volume; and wherein the retaining structure is configured for holding the hair treatment.

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As currently amended, claim 3 is directed to a hair treatment applicator which comprises (i) a *handle* having a longitudinal axis and *being rigidly formed*; (ii) a first head being connected to the handle, the first head having a *plurality of first tines disposed on the first head such that each of the plurality of first tines is comprised within a first row of two or more tines aligned in a direction substantially parallel to the longitudinal axis of the handle and a second row of two or more tines aligned in a direction substantially perpendicular to the longitudinal axis of the handle, the plurality of first tines forming a first retaining volume*; (iii) a second head being connected to the handle, the second head having a *plurality of second tines disposed on the second head such that each of the plurality of second tines is comprised within a first row of two or more tines aligned in a direction substantially parallel to the longitudinal axis of the handle and a second row of two or more tines aligned in a direction substantially perpendicular to the longitudinal axis of the handle, the plurality of second tines forming a second retaining volume*; and (iv) a separation volume, wherein the first retaining volume and the second retaining volume are separated by the separation volume, and wherein the first and second retaining volumes are configured for holding the hair treatment.

Applicants' hair treatment applicator is configured to enable a user to apply a hair treatment composition simultaneously to a plurality of separate sections of hair while leaving a separate untreated section of hair between the treated sections of hair. The user can achieve these results, due to the configuration of the retaining structures relative to the separation volume and relative to the longitudinal axis of the handle, by passing Applicants' claimed hair treatment applicator through the hair in a path which is substantially parallel to the longitudinal axis of the handle of the hair treatment applicator. The rigid form of the elongated handle allows a user to grasp the hair treatment applicator in his or her hand for good control and maximum comfort in its use. The configuration of the tines on the head of the retaining structure or retaining volumes facilitates hair flow between the tines during application to the hair of the hair treatment composition and provides even distribution of the hair treatment composition on the treated sections of the hair.

In contrast to Applicants' hair treatment applicator of claims 2 and 3, the massage glove of Norton does not comprise a rigidly formed handle. Instead, a flexible glove having receptacles at each of the glove finger tips is disclosed. The glove of Norton is

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flexible, and can be made of rubberized material, such that it can be worn on the hand of a person giving a massage. Norton does not disclose a handle as an elongated member which is rigidly formed so that it can be grasped in the hand of a user during use and good control of the heads attached to the handle can be maintained.

Further, while the massage glove of Norton has projections upon each receptacle, no particular arrangement for such projections on the receptacle is taught other than that shown in Figure 1 of Norton. However, this arrangement of the projections on each receptacle, as shown in Figure 1 of Norton, is in a diamond-like pattern relative to the longitudinal axis of the glove and to a direction perpendicular to the longitudinal axis of the glove. Such a design contains some *single* projections in rows which are aligned in a direction perpendicular to the longitudinal axis of the glove. Thus, Norton does not disclose an arrangement of projections in which *each projection* is comprised in a row of two or more projections aligned in a direction substantially parallel to the longitudinal axis of the glove as well as in a *row of two or more* projections aligned in a direction substantially *perpendicular to the longitudinal axis* of the glove.

Thus, as it fails to disclose each and every element of Applicants' claimed hair treatment applicator, Norton is not anticipatory.

Additionally, Norton provides no motivation or suggestion to one of ordinary skill in the art to modify the massage glove in order to achieve Applicants' hair treatment applicator as currently claimed. The disclosure of Norton is limited to a glove having one or more receptacles for tonic, wherein the tonic is forced out of the receptacle when the glove and the receptacle are compressed. Thus, the glove and the receptacle must be made of a material which can be compressed, such as rubber. Further, Norton fails to provide any teaching or suggestion regarding the criticality of the arrangement of the projections on the receptacles, let alone such an arrangement suitable for an alternative use of applying a hair treatment composition simultaneously to a plurality of separate sections of hair while leaving a separate untreated section of hair between the treated sections of hair. Accordingly, Applicants' claimed hair treatment applicator is unobvious over Norton.

Norton fails to disclose each and every element of Applicants' claimed hair treatment applicator. Norton also fails to provide any motivation or suggestion for

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modifying the device of Norton to achieve Applicants' claimed hair treatment applicator.  
Therefore, Applicants' claims 2 and 3 are novel and unobvious over Norton.

#### CONCLUSION

In light of the amendments and remarks presented herein, it is requested that the Examiner reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

Applicant has made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicant respectfully requests reconsideration of this application and allowance of Claims 1-3.

Respectfully submitted,  
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